

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
BERNA, Philippe et al
Serial No. 08/580,493
Deposited: Dec. 29, 1995
For: PROCESS FOR MAKING A
VERSATILE CLAMPING DEVICE
DESIGNED TO HOLD OBJECTS
WITHOUT DAMAGING THEM, SUCH
A DEVICE AND ITS USE

Examiner: Tom Hughes

Molières-sur-Cèze, France
March 20, 1997

REQUEST FOR CLARIFICATION
REGARDING A LETTER ABOUT IMPROPER FILING
AND FOR RESTORING A FILING DATE

Assistant Secretary and Commissioner of Patents and Trademarks
Special Program Law Office
For the Attention of John F. Gonzales, Senior Legal Adviser
Washington, D.C. 20231
Fax No: 1 703 308 6916

Sir:

The applicant has just received a "letter regarding improper filing".

First of all, it would be kind of you of clarifying which date has been given to this letter. What is stamped on the front of the letter is actually illegible and incomprehensible (see copy of this front sent below). It is difficult also to read from which office this letter has been issued. It would be proper to restart the period set by this letter.

Secondly, it would be interesting to know why no notification has been sent to the applicant on the receipt of the notice of appeal on December 1st, 1995 to inform him that the fees then paid were insufficient as it is clearly provided for in M.P.E.P. 509. For the applicant, it would have been then easy using FEDEX to send a payment for a second month of extension. In fact, the notice of appeal received by the PTO on December 1st, 1995 had been air mailed registered from France as soon as on November 06, 1995 (see below a copy of the receipt from the French postal service). More likely, this mail was held up by a national strike of the French postal service sorting centers which started some days later upon the announcement by the French Government of unpopular curbs. Normally a letter such as this air mailed petition should have reached the PTO well before November 16, 1995, within 6 to 8 days, no more. That is why only a one-month extension fee should have been sufficient. As the applicant got no news from the Patent Application Processing Division, he considered that everything was O.K. when he filed thru UPS a continuation application on December 29, 1995.

And there was no more reaction of the Application Processing Division at this time to inform the applicant in complete disregard for M.P.E.P. 509 that the fees paid would have been insufficient despite it was then still possible to extend the period for response (until January 3, 1996) by some additional extension fees.

In fact, a status enquiry letter was even necessary on 06/07/96 with strong evidence in support to make them realize that they received a continuous application on December 29, 1995 at 1.23 pm.

Once the number and the filing date have been notified upon this enquiry nothing could make think the applicant that something went wrong, chiefly because the notice of appeal had been air mailed largely before the official announcement of the strike. The applicant was completely unaware that this notice had only arrived on December 1, 1995.

The applicant requests that this Division supports the consequences of her casualness, and as a result that the applicant should be relieved of his obligation of making revived the former application and that the filing date of the present application could be restored at December 29, 1995.

In fact, should it have been no strike of the French postal service sorting centers, the petition should have arrived in due time before November 16, 1995 opening a fee free two-month period for filing a brief of appeal or a continuous application. And with the regular reception of a continuous application on December 29, 1995, the PTO would have received properly the same amount of money. In other words, the PTO is losing no money in restoring the filing date for the present application at December 29, 1995 in consideration for the failure of the Application Processing Division of notifying the applicant in due time that the payment was insufficient on December 1 and 29, 1995 as it provided for in M.P.E.P. 509.

Philippe BERNA

Dr. Philippe Jean Henri Berna

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CERTIFICATION OF FACSIMILE TRANSMISSION

+ 2 document copies
I hereby certify that this paper of two pages including this one has been facsimile transmitted to the Commissioner of Patents and Trademarks Office on the date shown below.

Philippe Berna

Philippe BERNA
Signature

03/20/97
Date



UNITED STATES DEPARTMENT OF COMMERCE
 Patent and Trademark Office
 ASSISTANT SECRETARY AND COMMISSIONER OF
 PATENTS AND TRADEMARKS
 Washington, D.C. 20231

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 France

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**OFFICE OF PETITIONS
 A/C PATENTS**

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 : LETTER REGARDING
 : IMPROPER FILING
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The above-identified application was recently referred to this office for review of the filing date accorded the application.

The application was deposited on December 29, 1995, as a continuation application under 37 CFR 1.62 based on prior application No. 08/321,589.

This application is not a proper filing under 37 CFR 1.62, because the prior application was abandoned prior to the date of deposit of the 37 CFR 1.62 application.

37 CFR 1.62(a) reads, in part, as follows:

A continuation, continuation-in-part, or divisional application, which uses the specification, drawings and oath or declaration from a prior nonprovisional application which is complete as defined by § 1.51(a)(1), and which is to be abandoned, may be filed under this section before the payment of the issue fee, abandonment of, or termination of proceedings on the prior application, or after payment of the issue fee if a petition under § 1.313(b)(5) is granted in the prior application. (emphasis supplied)

The file of prior application No. 08/321,589 reveals that a final Office action was mailed therein on July 3, 1995, setting a 3-month shortened statutory period for response. On October 16, 1995, an "Advisory Action" was mailed resetting the period for response to the final Office action to expire "three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later." Thus, the period for